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IN THE SUPREME COURT OF THE UNITED STATES

M. S. CHAMBLISS :
:
:
: October Term 1969
VS. :
: No. 978
:
:
COCA-COLA BOTTLING COMPANY:
ET AL :

REBUTTAL BRIEF

JOHN A. CHAMBLISS, JR.
1111 Maclellan Building
Chattanooga, Tennessee 37402
Attorney for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

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	:	
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COCA-COLA BOTTLING COMPANY ET AL	:	

REBUTTAL BRIEF

The reply brief of respondent prompts this brief rebuttal.

On page 16 of respondent's Appendix it is clearly shown that petitioner, and several other stockholders, still hold, own, and decline to surrender, a total of 189 shares of the stock in question. The offer of exchange by respondent still continues--in other words, the exchange

has never been completed, especially in the light of respondent's failure to register the transaction with the SEC.

Again, in respondent's Appendix at page 14 through page 19, the affidavit of respondent states that the complaint in the present case is without merit. This, we say, constitutes a continuing misrepresentation of mixed fact and law.

In the light of the foregoing, we believe the lower courts obviously erred in ruling this case to be barred by the statute of limitations.

Also, it will be noted that on page 3 of respondent's brief, it is contended that "the application of Rule 23 of the Rules of Civil Procedure is not involved in this case." No reason is cited for this Rule not being involved.

Yet, the Federal Rules of Civil Procedure were amended, on February 28, 1966, so that Section 23(e) thereafter read:

> "A class action shall not be dismissed or compromised without the

approval of the Court, and notice of proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs."

But this case--a class action--was dismissed on October 26, 1967--over a year after this amended Rule took effect--without complying with Rule 23(e)!

In concluding this rebuttal, we also wish to suggest the relevancy of the recent decision of the United States Court of Appeals for the Second Circuit in Katz Vs. Amos Treat & Co., 411 F.2d 1046.

Respectfully submitted,

JOHN A. CHAMBLISS, JR.
1111 Maclellan Building
Chattanooga, Tennessee 37402
Attorney for Petitioner